IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION No.760/2003.

Mr. Manohar Bhatia ..Petitioner.

V/s.

Amee Rubber Industries Pvt Ltd. ..Respondent.

Mr D.A. Mehta i/b Mr. Vinod Juwale for the petitioner.

None for the Respondent.

CORAM: V.C. DAGA,J.

DATED: 28th FEBRUARY,2007.

P.C.:-

1. Heard the learned counsel for the petitioner. None for the respondent.

2. Perused petition.

3. Petitioner has invoked jurisdiction of this Court under Sections 433 and 434 of the Companies Act, 1956 to seek winding up of "Amee Rubber Industries Pvt. Ltd. (hereinafter referred to as "company").

4. The factual matrix on which petition is based, reveals that petitioner has provided

loan of Rs.12,50,000/- in between the period 1997 to 2000 to the Company. In order to acknowledge the said loan transactions and to promise repayment of the said loan amount, the Company has executed from time to time various bills of exchange in favour of the Petitioner. The company had even offered to pay interest at the rate of 18% per annum to the petitioner on the amount borrowed by the Company.

5. The loan amount advanced by the petitioner remained unsatisfied since no payments were made by the Company. With the result, the petitioner was required to demand outstanding dues vide his letter dated 14.9.2002. Since there was no response from the company, the petitioner was required to issue statutory notice dated 7.10.2002 under Section 434 of the Companies Act, 1956 demanding outstanding dues; to which there was no response from the side of the company.

6. The said notice was sent on the registered address of the respondent company by the petitioner. Affidavit of service dated 7th March, 2006 is filed on record. It is not in dispute that the part payments were made by the Company from time to time in discharge of it's

liability. It is also not in dispute that two cheques; one for Rs.32,294.33 and another for Rs.4,25,000/-was issued in favour of the petitioner but both cheques came to be dishonoured. The admission of debt is not in dispute.

7. No reply to the statutory notice has been given inspite of service of the notice. Petitioner having left with no other alternative, invoked jurisdiction of this Court to seek winding up of the company.

8. After admission of this petition, notices were then send to the company. Notice was served on the respondent. Nobody is appearing on behalf of the Company in this petition. However, no reply appears to have been filed to answer the petition or to oppose the same.

9. In the above view of the matter, considering absence of contest, the company was bound to discharge it's liability set up in the winding up petition. In other words, assertion made in the petition which are supported by the documents placed on record have remained uncontroverted. In that sense the legal

presumption that arises against the respondent company that it is unable to pay it's debts has remained unrebutted. The petitioner has made out a case to make order under Section 434 (1) (a) of the Companies Act, 1956. Under these circumstances, the respondent company is liable to be wound up.

10. In the result, the petition is made absolute in terms of prayer clause (a) and (b) with no order as to costs.

[V.C.DAGA,J]